

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)
)
) Criminal No. 19-369
)
v.)
)
LAFON ELLIS)

**MR. ELLIS' REPLY TO GOVERNMENT'S RESPONSE TO DEFENDANT'S
SUPPLEMENT CONCERNING SOURCE CODE PROTECTIVE ORDER**

The government has agreed to the *Pickett* protective order requested by the defense but has one objection specifically language within the *Pickett* protective order stating: "The Defense Expert shall be allowed to download portions of the source code as necessary to analyze the source code and prepare for litigation onto a thumb drive or other electronic storage device."

The government proposed that the Court eliminate that sentence from the *Pickett* protective order and include in its protective order the following language: "no one is permitted to electronically copy any portion of the source code." *See* ECF 159 at 1.

According to the government, one reason for justifying such restrictive language is because "[a]s the defense has made clear, it intends to argue that the above-quoted provision allows it simply electronically copy the entire source code onto another electronic device. It has no intent to copy only a portion of the source code." *See* ECF 159 at 2. This is far from the truth, an opinion held by the government or their expert, but nevertheless, another baseless accusation about what the defense or their experts have said or their actual intent without citation to the record.

Mr. Ellis objects to the government's objection and proposed alternative language. Mr. Ellis proposes alternative language, which has already been agreed upon by the parties in their proposed stipulated protective order filed at ECF 139-1 at ¶ 6.1. That language reads:

Counsel and the Outside Experts may take notes in electronic or any other format that reference the SOURCE CODE that are reasonably necessary. Counsel and Outside Experts may also request paper or electronic copies of limited portions of the SOURCE CODE that are reasonably necessary for the preparation of court filings, pleadings, expert reports, or other papers, or for hearing or trial. Cybergenetics or the government shall provide all such SOURCE CODE in paper or electronic form including bates numbers and the label “HIGHLY CONFIDENTIAL - SOURCE CODE.” Cybergenetics or the government may challenge the amount of SOURCE CODE requested in hard copy by or electronic form by filing a motion with the Court. Counsel and Outside Experts may reference the limited portions of the SOURCE CODE in reports or pleadings.”

See ECF 139-1 at ¶ 6.1.

The above language has already been agreed upon by the government, and addresses both the government’s concerns in “wholesale copying” and Mr. Ellis’s concerns in being able to meaningfully review the code.

Wherefore, Mr. Ellis requests the Court to respectfully enter the protective order mirroring the final *Pickett* protective order as requested by Mr. Ellis in Exhibit 3 of ECF 155 with two modifications. The Court shall excise the language: “The Defense Expert shall be allowed to download portions of the source code as necessary to analyze the source code and prepare for litigation onto a thumb drive or other electronic storage device.”

The Court shall replace said language with: Counsel and the Outside Experts may take notes in electronic or any other format that reference the SOURCE CODE that are reasonably necessary. Counsel and Outside Experts may also request paper or electronic copies of limited portions of the SOURCE CODE that are reasonably necessary for the preparation of court filings, pleadings, expert reports, or other papers, or for hearing or trial. Cybergenetics or the government shall provide all such SOURCE CODE in paper or electronic form including bates numbers and the label “HIGHLY CONFIDENTIAL - SOURCE CODE.” Cybergenetics or the government may challenge the amount of

SOURCE CODE requested in hard copy by or electronic form by filing a motion with the Court. Counsel and Outside Experts may reference the limited portions of the SOURCE CODE in reports or pleadings.”

Respectfully Submitted,

/s/ Khasha Attaran
Khasha Attaran
Assistant Federal Public Defender